आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL, VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गाराव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं**./I.T.A.No.261, 262 & 263/Vizag/2017**
(निर्धारण वर्ष / Assessment Years: 2005-06, 2007-08 & 2008-09)

Bhavanasi Anjaneyulu Guntur [PAN No.ACJPB0329C]	ACIT, Central Circle Vijayawada
(**अपीलार्थी** / Appellant)	(**प्रत्यार्थी** / Respondent)

आयकर अपील सं**./I.T.A.No.354 & 349/Vizag/2017**
(निर्धारण वर्ष / Assessment Years: 2005-06 & 2007-08)

DCIT, Central Circle Vijayawada	Bhavanasi Anjaneyulu Guntur
(**अपीलार्थी** / Appellant)	(**प्रत्यार्थी** / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri G.V.N. Hari, AR
प्रत्यार्थी की ओर से / Respondent by	:	Shri Debakumar Sonowal, DR
सुनवाई की तारीख / Date of hearing	:	09.01.2018
घोषणा की तारीख / Date of Pronouncement	:	19.01.2018

आदेश / O R D E R

PER Bench:

These cross appeals filed by the assessee and revenue are directed against order of the CIT(A)-3, Visakhapatnam vide ITA No.80/2015-16/CIT-(A)-3/VSP/2016-17 dated 22.2.2017, No.81/2015-16/CIT-(A)-3/VSP/2016-17 dated 21.2.2017 and No.82/2015-16/CIT-(A)-3/VSP/2016-17 dated 21.2.2017 for the assessment years 2005-06, 2007-08 and 2008-09. Since, the facts are identical and issues are common, they are clubbed, heard together and disposed-off by way of this common order for the sake of convenience.

ITA 261 & 354/Vizag/2017 (A.Y. 2005-06):

2. Brief facts of the case are that the assessee is an individual deriving income from house property, engaged in the business of lime stone, making of burnt lime, trading in lime products and quarrying of lime stone etc., and has filed the original return of income on 31.3.2006 admitting total income of Rs.9,89,730/-. A search & seizure operation u/s 132 of the Income Tax Act, 1961 (hereinafter called as 'the Act') was conducted on 21.1.2011 in the case of the assessee and during

the course of search, the assessee had offered the additional income of Rs.3.00 crores for various assessment years.

2.1. The Assessing Officer (A.O.) has issued the notice dated 4.1.2012 u/s 153A of the Act and the assessee has filed the return of income on 31.3.2012 in response to the said notice admitting total income of ₹ 14,89,729/- including Rs.5,00,000/- of additional income offered during the course of search. The A.O. has passed the assessment order making an addition of Rs.23,90,000/- and Rs.62,83,906/- respectively u/s 68 of the Act as unexplained cash credit and unexplained gift. Regarding the cash deposits the A.O. observed that the amount of Rs.23,90,000/- was deposited by the assessee in the savings bank A/c No.01 /0000714 in Andhra Bank for which the assessee failed to explain the source, thus the A.O. has treated the same as unexplained deposits and brought to tax.

2.2. Further, the A.O. observed that the assessee has not produced any evidence regarding gifts amounting to Rs.62,83,906/- received from Sri Bhavanasi Satyakumar, son of the assessee. The A.O. has treated the gifts received as unexplained cash credit u/s.68 of the l.T Act. The A.O. is of the opinion that the assessee

failed to prove the identity, genuineness and creditworthiness of the person who gifted the amount.

3. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) partly allowed the appeal of the assessee.

4. Aggrieved by the order of the Ld. CIT(A), the assessee filed appeal before this Tribunal with the following grounds:

> *1. The order of the Ld. CIT(A) is erroneous to the extent it is prejudicial to the appellant.*
>
> *2. The learned CIT(A) erred in confirming the addition of Rs.23,90,000/- representing the cash deposits into the bank account.*
>
> *3. Any other ground or grounds that may be urged at the time of hearing.*

5. During the appeal hearing, the assessee has raised additional ground with regard to the assessment of income made u/s 143(3) r.w.s. 153A of the Act. Since the issue is a legal issue goes to the root of the assessment the additional ground raised by the assessee is admitted after hearing both the parties. The additional ground raised by the assessee reads as under:

> *"On the facts and in the circumstances of the case, whether the addition of Rs.23,90,000 made by the assessing officer towards unexplained cash deposits in bank account is beyond the scope of*

additions that can be made in an assessment u/s 143(3) r.w.s. 153A of the Income Tax Act, 1961."

6. During the appeal hearing, the ld. A.R. argued that the addition made by the A.O. on account of Rs.23,90,000/- towards unexplained cash deposits in the bank account and the other addition was towards unexplained gift received from his son. The assessee is in appeal with regard to the addition of Rs.23,90,000/- and the revenue is in appeal against the deletion of addition of Rs.62,83,906/-. The Ld. A.R. argued that the sum of Rs.23,90,000/- cash was deposited in the bank accounts and the same was disclosed in the return of income. The assessee has filed a paper book in page No.6 of the paper book the assessee has disclosed the bank account and representing balance of Rs.6,07,459/- in respect of Andhra bank, Piduguralla and the the return of income for the A.Y.2005-06 was filed on 31.3.2006. The time limit for issue of notice u/s 143(2) of the Act got expired. The Ld.A.R. argued that since the assessee had disclosed the bank account in the balance sheet and in the return of income, and any addition in respect of completed assessments required to be made only on the basis of the incriminating material. The Ld.AR further argued that the addition of Rs.23,90,000/- was not made on the basis of any incriminating material but made on the basis of the information furnished by the assessee in

the regular return of income and the books of accounts. Accordingly, argued that the addition made by the A.O. required to be deleted. With respect to the gifts of Rs.62,83,906/- the Ld.AR submitted that the addition was also from capital account, which was disclosed in the regular return of income. He further submitted that the assessee has received the gifts of Rs.62,83,906/- for which the details were furnished by the assessee. The gifts were received from B. Satya Kumar, son of assessee in US dollars. Since the assessee had already filed the return of income and the time limit for issue of notice u/s 143(2) of the Act has been expired no addition u/s 153A of the Act is permissible without the incriminating material. Hence, requested to delete the additions and relied on the orders of this Tribunal in the case of P. Rama Raju in ITA Nos.424, 425 & 426/Vizag/2013 dated 31.7.2017.

7. On the other hand the Ld.DR supported the orders of the AO and argued that the AO has rightly made the addition which required to be upheld.

8. We have heard both the parties and perused the material on record. As per the information available on record from the assessment order as well as the Ld.CIT(A) order, the addition was not made on the basis of any incriminating material but on the basis of the returns already filed. In this case, the return of income was filed on 31.03.2006 and the time limit for issue of notice u/s 143(2) has already been

expired on 31.03.2007. Now it is settled issue that in search assessments, the addition cannot be made without the incriminating material in completed assessments. In the case of the assessee, there is no incriminating material found during the course of search on the issues on which the additions were made. For ready reference we extract the relevant paragraph of the order of this Tribunal in the case of P. Rama Raju relied up on by the assessee which reads as under:

> *"10. We have heard both the parties and perused the materials available on record. In this case, search was conducted on 22.8.2008 and the assessment under the consideration is the A.Y. 2005-06. Time limit for issue of notice u/s 143(2) of the Act is expired on 31.3.2007. Since the period of limitation for issue of notice u/s 143(2) of the Act has been expired, the assessment deemed to have been completed and reached finality. As per the judicial precedents and the ruling of this Tribunal in the case law cited (supra), the coordinate bench held that where the assessment have been reached finality cannot be tinkered with unless there was a seized document indicating undisclosed income or the asset. For ready reference, we extract the relevant para of the order cited (supra):*
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> > *11. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The only issue that arises for our consideration is whether on the facts and in the circumstances of the case, the A.O. is right in making additions without any seized materials in respect of assessment years for which the assessment proceedings have been concluded as on the date of search. The Ld. A.R. for the assessee, submitted that the issue has been already considered by the coordinate bench of Visakhapatnam ITAT in the case of Sri Hari Prasad Bhararia Vs. DCIT in ITA Nos.435 to 441/Vizag/2014, wherein it has been observed that the A.O. has no jurisdiction to make additions in the absence of any seized materials in the assessments made u/s 143(3) r.w.s. 153A of the Act, for the assessment years which are concluded and no proceedings are pending as on the date of search. The relevant portion of the order is extracted below:*
> >
> > > *12.We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The factual matrix of the case is that there was a search action u/s 132 of the Act. Consequent to the search, the assessee case was centralized and accordingly, notice u/s 153A of the Act was issued requiring*

assessee to file return for 6 assessment years immediately preceding the assessment year in which search is conducted. The assessee filed returns in response to notice u/s 153A of the Act. The A.O. completed the assessment u/s 143(3) r.w.s. 153A of the Act and made additions towards deemed dividend under the provisions of section 2(22)(e) of the Act. The A.O. was of the opinion that transactions between the assessee and his company is coming within the definition of deemed dividend under the provisions of section 2(22)(e) of the Act. It is the contention of the assessee that the assessment order passed by the A.O. u/s 143(3) r.w.s. 153A of the Act, for the assessment years 2005-06 to 2009-10 is null and void as the A.O. has made additions towards deemed dividend u/s 2(22)(e) of the Act without any incriminating materials. The assessee further contended that as per section 153A of the Act, de-novo assessment can be made only in respect of assessment year for which the assessment proceedings has been abated and that in respect of assessment years for which the assessment had already been completed, no additions can be made u/s 153A of the Act unless there was incriminating material found during the course of search.

13. The A.O. has passed assessment orders u/s 153A of the Act, for all the six assessment years, immediately preceding the year in which the search was conducted. According to the A.O., as per the provisions of section 153A of the Act, there is no limitation or restriction provided in the new procedure of search assessment on the powers of the A.O. for making assessment/re-assessment and the A.O. is not required to confine his assessments on the materials found during the course of search as was the case in the old procedure of block assessments. It is the contention of the assessee that the A.O. cannot disturb the completed assessment unless there was a seized material. The assessee further contended that where assessments are not pending as on the date of search and time limit for issue of notice u/s 143(2) of the Act has been expired, irrespective of the fact that those assessments have been completed u/s 143(1) or 143(3) of the Act, then the A.O. has no power to re-assess the income of those completed assessment years. We find force in the arguments of the assessee, for the reason that the coordinate bench of this Tribunal in ITA Nos.300 to 305/Vizag/2012, in case of L. Suryakantham Vs. ACIT, has considered similar issue and held that the A.O. had no jurisdiction to make additions u/s 153A of the Act, for the assessments which are not pending as on the date of search and also the time limit for issue of notice u/s 143(2) of the Act has been expired. The relevant portion of the order is extracted below:

> *19. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The factual matrix of the case is that there was a search action u/s 132 of the Act. During the course of search, incriminating documents found reveals that the assessee has*

inflated labour charges for the assessment years 2008-09 & 2009-10. Based on the documents found during search, the assessee has accepted that he has inflated 10% labour charges and which is common in this line of business. Consequent to search action u/s 132 of the Act, the assessee case has been centralized and accordingly fresh assessment proceedings have been initiated by issuing notice u/s 153A/153C of the Act for the six assessment years immediately preceding the assessment year in which search was conducted. The assessee has filed revised returns in response to notice u/s 153A of the Act and admitted the additional income disclosed during the course of search. The case has been selected for scrutiny. During the course of assessment proceedings, the assessee was asked to produce books of accounts and relevant bills & vouchers in support of expenditure claimed. In response, the assessee filed written submission and stated that the books of accounts are not available and hence cannot be furnished. Therefore, the A.O. issued a show cause notice and asked to explain why the net profit from the business shall not be estimated. In response to show cause notice, the assessee has filed a written reply and contended that the income for the assessment year 2004-05, 2005-06 and 2007-08 cannot be tinkered with, as there was no incriminating material found during the course of search for the above assessment years and as such no additions can be made to the returned income. It is further submitted that as per sec. 153A of the Act, de-novo assessment can be made only in respect of the assessment year for which the assessment proceedings had been abated and that in respect of assessment years for which the assessment had already been reached a finality, such assessment could not be made u/s 153A of the Act unless there was seized materials.

20. The A.O. has passed reassessment orders u/s 153A/153C of the Act for all the six assessment years immediately preceding the year in which search was conducted. According to the A.O., as per the provisions of section 153A of the Act, there is no limitation or restriction provided in the new procedure of search assessments on the powers of A.O. for making assessment/reassessment and the A.O. is not required to confine his assessments on the material found during the course of search as was the case in the old procedure of block assessments. The new procedure of block assessment was explained by way of provisions of section 153A of the Act. As per section 153A of the Act, the A.O. shall assess or reassess the total income of the specified six assessment years irrespective of the fact that the assessment of the said years were completed or pending as on the date of search. Therefore, the A.O. has reassessed the income of six assessment years and recomputed the profits afresh after considering the relevant facts available on record. It was the

contention of the assessee that the A.O. cannot disturb the completed assessments unless there was a seized material. The assessee further contended that where assessments are not pending as on the date of search and time limit for issue of notices u/s 143(2) of the Act has been expired, irrespective of the fact that those assessments have been completed u/s 143(1) or 143(3) of the Act, then the A.O. has no power to reassess the income of those completed assessment years.

21. We find force in the arguments of the assessee for the reason that the issue no longer res integra, as the issue has been already decided by the ITAT, special bench and held that where the assessments are not pending as on the date of search, the A.O. losses jurisdiction u/s 153A of the Act to reassess the income of those completed assessments. Though the provisions of section 153A of the Act does not specify abated and completed assessments, the natural meaning assigned to it should be given to interpret the provisions in such a way that which shall not cause undue hardship to the tax payers. The provisions of section 153A of the Act explained the procedure of assessments, abated assessments and the manner in which the assessment should be framed, which was further supported by circular no.7 of 2003 issued by the CBDT. When the law has explained the position of abated assessments, then the same way the completed assessment should be treated so as to understand that those assessments are reached finality and which cannot be tinkered with unless there was a seized document. Therefore, we are of the considered opinion that where search is initiated, all pending assessments are merge into one and only one assessment for each assessment year shall be made separately on the basis of findings of search and other material existing or brought on record by the A.O. In respect of non abated or completed assessments, the assessment will be made on the basis of books of accounts or other relevant documents found during the course of search, but not produced in the course of original assessment.

22. In the present case on hand, on perusal of the document available on record, we find that the assessment for the assessment year 2004-05 to 2007-08 were not pending as on the date of search. The fact that the assessment has been completed u/s 143(1) & 143(3) of the Act are not material. The time limit for issue of notice u/s 143(2) of the Act has been expired. On further verification of the documents available on record, we find that there was no incriminating documents found during the course of search in respect of assessment year 2004-05 to 2007-08. Therefore, we are of the opinion that the A.O. was not correct in reassessing the total income of the assessment year 2004-05 to 2007-08 in the absence of any seized materials. Accordingly, we

direct the A.O. to delete the additions made for the assessment year 2004-05, 2005-06 & 2007-08.

23. It is pertinent to discuss herein the case laws relied upon by the assessee. The assessee has relied upon the ITAT, special bench decision in the case of All Cargo Global Logistics Ltd. Vs. DCIT (2012) 137 ITD 287. The coordinate bench of this Tribunal, while deciding the issue in favour of the assessee held as under:

"In assessments that are abated, the AO aretains the original jurisdiction as well as jurisdiction conferred on him u/s 153A for which assessments shall be made for each of the six assessment years separately. In other cases, in addition to the income that has already been assessed, the assessment u/s 153A will be made on the basis of incriminating material, which in the context of relevant provisions means – (i) books of account, other documents, found in the course of search but not produced in the course of original assessment, and (ii) undisclosed income or property discovered in the course of search."

24. The assessee relied upon, A.P. High Court decision in the case of CIT Vs. M/s. AMR India Ltd. in ITTA No.354 of 2014 dated 12.6.2014. The Hon'ble High Court held that the A.O. has no jurisdiction to re-agitate the assessments which were already completed and subsiding. The relevant portion is extracted below:

"We have heard Sri J.V. Prasad, learned counsel for the appellant, and gone through the impugned judgement and order of the learned Tribunal.

It appears that the learned Tribunal found on fact that after completion of assessment proceedings and after reaching finality thereon, the Assessing Officer tried to reagitate the assessments. According to us, the learned Tribunal has rightly held that the Assessing Officer has no jurisdiction to reagitate the assessments which were already completed and subsisting. We therefore do not find any element of law to be decided in this appeal.

Hence, the appeal is dismissed. There will be no order as to costs."

25. The assessee has relied upon the coordinate bench decision of ITAT, Visakhapatnam in the case of A.T. Rayudu in ITA No.373 to 379/Vizag/2014. The coordinate bench, under similar circumstances held the issue in favour of the assessee. The relevant portion is reproduced hereunder:

"22. In this regard, it is also pertinent to refer to the following

observations made by the Special bench in the case of All Cargo Global logistics Ltd (supra):-

"57 (f) In the case of Parashuram Pottery works co. Ltd Vs. ITO (106 JTR 57)(SC), it has been mentioned in the last paragraph of the judgment that the court has to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi judicial controversies as it must in other spheres of human activity. Our decision is in consonance with this observation".

The decision rendered by the Special bench that the assessing officer can make additions in the case of concluded assessments on the basis of incriminating materials is also based upon the decision rendered by Honble supreme Court in the case of Parashuram Pottery works Co. Ltd (supra).

23. We have earlier noticed that the Hon'ble jurisdictional Andhra Pradesh
High Court has also upheld by the orders passed by the Tribunal by following the decision rendered by the Special bench in the case of All Cargo Global logistics Ltd (supra) in the following cases:
(a) Sree Lalitha Constructions (J1TA No 368 of 2014)
(b) M/s. Hyderabad House Pvt Ltd (ITTA No.266 of 2013)
(c)M/s. AMR India ltd (FITA No.357 /v/2014)

Further we agree with the contentions of the assessee that the decision rendered by the jurisdictional High Court in the case of Gopal Das Bhadruka (supra) have been rendered on the facts prevailing in those cases, since the issue relating to concluded assessments and pending assessments was not before the I1on'ble Andhra Pradesh High Court On the contrary, the above said three decisions of the jurisdictional High Court comes to the support of the assessee's contentions with regard to the legal proposition agitated before us, besides the decisions rendered by various other High Courts. Accordingly, we are of the view that the scope of enquiry in the case of unabated assessments, i.e., the assessment years in which proceedings are not pending, is that the undisclosed income should be ascertained only on the basis of materials found during the course of search. If no incriminating material showing any undisclosed income was found in the case of concluded proceedings, then the question of making any addition does not arise. in that case, the assessing officer should complete the assessment of those years by determining the very same total income that was assessed in the earlier proceeding.

24. In view of the above, we are unable to agree with the contentions of Ld Standing Counsel that the assessing officer would get unfettered powers in the case of unabated assessments, once they were reopened us 153A of the Act. In our view, in the case of unabated

assessments, the total income should be determined by the assessing officer by combining the income already assessed/disclosed in the return of income and the undisclosed income, if any, found during the course of search proceeding. Even otherwise, it is settled proposition of law that the assessee is entitled to take support of the decision in his favour, when two contradictory views have been expressed by the High Courts. In the instant case the Hon'ble jurisdictional High Court comes to the support of the assessee in respect of the legal proposition in addition to the decision rendered by the Hon'ble Bombay High Court. Accordingly, we find merit in the contentions of the assessee on the legal issue."

26. Considering the facts and circumstances of the case and also respectfully following the coordinate bench decision in the case of All Cargo Logistics Pvt. Ltd. (supra), we are of the opinion that the A.O. has made reassessment u/s 153A/153C of the Act on the basis of information/material available in the return of income, without referring to any seized material. Therefore, following the special bench decision (supra) we hold that the A.O. had no jurisdiction to make additions u/s 153A of the Act for the assessments which are not pending as on the date of search. In this case, the search was conducted on 14.7.2009. The assessment for the assessment years 2004-05 to 2007-08, were not pending as on the date of search. The time limit for issue of notice under sec. 143(2) has been expired. Therefore, the A.O. has no jurisdiction to reassess the income for the assessment year 2004-05 to 2007-08 in the absence of any incriminating materials. Hence, we delete the additions made by the A.O. for the assessment year 2004-05, 2005-06 & 2007-08. Accordingly, the ground raised by the assessee is allowed.

14. In this view of the matter and considering facts and circumstances of this case and also respectfully following the decision of co-ordinate bench of Visakhapatnam, in the case of L. Suryakantham Vs. ACIT, in ITA Nos.300 to 305/Vizag/2012, we are of the view that the A.O. has made reassessment u/s 153A/153C of the Act, on the basis of information/material available in the return of income, without referring to any seized material. Therefore, following the special bench decision (supra) we hold that the A.O. had no jurisdiction to make additions u/s 153A of the Act, for the assessments which are not pending as on the date of search. The assessment for the assessment years 2005-06 to 2009-10 were not pending as on the date of search. The time limit for issue of notice under sec. 143(2) has been expired. Therefore, the A.O. has no jurisdiction to reassess the income for the assessment year 2005-06 to 2009-10 in the absence of any incriminating materials. The CIT(A) has rightly deleted the additions. We do not see any reason to interfere with the order of CIT(A). Hence, we inclined to uphold CIT(A) order and direct

the A.O. to delete the additions made towards deemed dividend for the assessment year 2005-06 to 2009-10.

12. In this case, search was taken place on 24.7.2008. As on the date of search, the assessments for the assessment years 2004-05 & 2005-06 are already concluded and there is no pending proceeding for those assessment years. The time limit for issue of notice u/s 143(2) of the Act, for the assessment years 2004-05 & 2005-06 has been expired. The A.O. made additions towards deemed dividend u/s 2(22)(e) of the Act without any incriminating materials and also based on the books of accounts and financial statements, which were already part of regular return of income filed by the assessee u/s 139(1) of the Act, for those assessment years. Therefore, considering the facts and circumstances of the case and also respectfully following the decision of coordinate bench of ITAT, Visakhapatnam in the case of Sri Hari Prasad Bhararia Vs. DCIT (supra), we are of the view that the A.O. has no jurisdiction to make additions in respect of concluded assessments in the absence of any incriminating materials found during the course of search. In this case, undoubtedly the A.O. has made additions towards deemed dividend on the basis of financial statements filed by the assessee along with regular return of income without any material found during the course of search. Therefore, we direct the A.O. to delete additions made towards deemed dividend u/s 2(22)(e) of the Act for the assessment years 2004-05 & 2005-06.

11. The similar issue has been considered by the Hon'ble ITAT Kolkata bench in the case of Smt. Yamini Agarwal Vs. DCIT (Central Circle)-3, Kolkata reported in 83 Taxman.com 209 after considering the decision of special bench ruling in the case of All Cargo Lotistics and the decision of Hon'ble Karnataka High Court in the case of Canara Housing and the Bombay High Court decision in the case of Anil Kumar Bhatia expressed a view that in respect of assessments completed prior to the date of search the scope of proceedings u/s 153A of the Act has to be confined only to the material found in the course of search. For the sake of convenience, we extract the relevant para-25 & 26 of the cited order.

***25.** We therefore hold that the scope of the proceedings u/s.153A in respect of assessment year for which assessment have already been concluded and which do not abate u/s.153A of the Act, that the assessment will have to be confined to only incriminating material found as a result of search. The next aspect to be considered is as to when returns of income filed u/s.139 of the Act are shown to have been accepted without an intimation u/s.143(1) of the Act or without any notice issued u/s.143(2) of the Act within the time limit contemplated by the proviso thereto, can be said to be assessment proceedings concluded that have not abated u/s.153A of the Act. Section 153A of the Act, uses the expressing "pending assessment or reassessment". When a return is filed*

and when neither an acknowledgement or intimation u/s.143(1)of the Act is issued nor a notice u/s.143(2) of the Act is issued within the time limit laid down in the proviso to Secc.143(2) of the Act, the proceedings initiated by filing the return are closed. In the present case, the period for issuing the notice u/s 143(2) elapsed. Therefore the process has attained the finality which can only be assailed u/s 148 or 263 of the Act. It can thus be concluded that making of an addition in an assessment under section 153A of the Act, without the backing of incriminating material, is unsustainable even in a case where the original assessment on the date of search stood completed by absence of issue of intimation under section 143(1) of the Act or by not issuing notice u/s.143(2) of the Act within the time limit laid down in the proviso to Sec.143(2) of the Act, results in an assessment proceedings and where such assessment proceedings are completed prior to the date of search then they do not abate in terms of the Second Proviso to section 153A(1) of the Act. The decision of the ITAT Kolkata Bench rendered in the case of Shri Bishwanath Garodia (supra) on identical facts of the case as that of the Assessee in the present case, clearly supports our conclusions as above.

26. *In the light of the discussion above, our conclusion is that in the present case, the issue dealt with by the AO in the assessment order u/s.153A of the Act, could not and ought not to have been examined by the AO in the assessment proceedings u/s.153A of the Act as the said issue stood concluded with the assessee's return of income being accepted prior to the date of search and no notice having been issued u/s.143(2) of the Act within the time limit laid down in that section. Such assessment did not abate on the date of search which took place on 28.3.2008. In respect of assessments completed prior to the date of search that have not abated, the scope of proceedings u/s.153A of the Act has to be confined only to material found in the course of search. Since no material whatsoever was found in the course of search, the additions made by the AO in the order of assessment for both the Assessment years could not have been subject matter of proceedings u/.s.153A of the Act. Consequently, the said various additions made in the orders of Assessment ought not to have or could not be made by the AO. Gr.No.1 raised by the Assessee in both the appeals are accordingly allowed.*

12. Respectfully following the decision of this coordinate bench in the case cited (supra) and the decision of Hon'ble ITAT Kolkata bench, we hold that the addition of Rs.2,50,000/- is squarely covered by the above case laws in favour of the assessee and the same is deleted. The appeal of the assessee is allowed on this ground.

8. Since the facts are identical, respectfully following the view taken by this Tribunal, we hold that the additions made without the

incriminating material is unsustainable. Accordingly, we delete the additions made by the AO and allow the appeal of the assessee and dismiss the appeal of the revenue on this issues.

9. Further, addition made in respect of gifts during the year under consideration on identical facts was of the assessment year 2004-05 and the ITAT held the issue in favour of the assessee vide ITA No.154/Vizag/2010 which reads as under :

> *"We have also examined the bank accounts of the son of the appellant and we find that there are regular transactions in his bank account and most of the time he was having sufficient balance. The bank accounts show the creditworthiness of the donor. The donor has also filed an income tax return in the USA. This is a gift whereas appellant's son has gifted a substantial amount to his father and this type of case should not be doubted. Because in our society whenever children goes abroad for employment, they used to send their savings to their parents through gift. Since the transactions are overseas transactions, it should not be doubted unless and until some contrary is brought on record. In the instant case though the assessing officer has made its all efforts to get the transactions verified, but he could not bring anything on record to doubt the same. Under these circumstances, we are of the view that the genuineness of the gift received by the appellant from his son should not be doubted. We accordingly set aside the order of the CIT(A) and delete the addition made in this regard."*

9.1. Since the issue is on identical facts, respectfully following the view taken by this tribunal the addition made in respect of the gifts is deleted on merits also.

10. In the result, the appeal filed by the assessee in ITA No.261/Vizag/2017 is allowed and the cross appeal filed by the revenue in ITA No.354/Vizag/2017 is dismissed.

ITA 262 & 349/Vizag/2017 (A.Y. 2007-08):

11. During the course of assessment u/s 153A, the A.O. found that the assessee has withdrawn a sum of Rs.2,25,90,000/- for purchase of agricultural lands. Since the purchase of land was not materialized the assessee has re-deposited a sum of Rs.1,72,05,000/- and the balance amount of Rs.53,85,000/- was utilized by the assessee but not reflected in his returns. The A.O. made the addition of Rs.1,72,05,000/- for not explaining the sources for redeposit of cash.

12. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) confirmed the addition of Rs.36,90,000/- and deleted the addition of Rs.1,35,15,000/-. Therefore, the assessee is in appeal challenging the addition confirmed by the ld. CIT(A). The revenue is in appeal against the addition deleted by the CIT(A) amounting to Rs.1,35,15,000/-.

13. During the appeal Ld. A.R. argued that the assessee had withdrawn the cash for the purpose of purchase of agricultural lands,

since the same was not materialized the cash withdrawn was re-deposited and there is no case for making any addition. The source for redeposit of cash was withdrawals made by the assessee. The Ld. A.R. further argued that the assessment in this case is pertaining to the assessment year 2007-08 and the return of income for the assessment year 2007-08 was filed on 31.3.2009 online and the time limit for issue of notice u/s 143(2) of the Act was expired on 30.9.2009 as on the date of search i.e. on 21.01.2011 and there were no pending proceedings and the addition was not made on incriminating material, thus argued that without the incriminating material the additions are not permissible in completed assessments. Hence requested to delete the addition.

14. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. It is observed from the assessment order that the assessee has withdrawn sum of Rs.2,25,00,000/- from First Tek Pvt. Ltd. which was recorded in the books of accounts of the First Tek Pvt. Ltd. This fact is evidenced by the page No.11 and 12 of the paper book submitted by the assessee. The fact that the transaction was recorded in the books of accounts of the First Tek Pvt. Ltd., is not disputed by the revenue. In fact the addition was made by the assessing officer on the basis of the

account copy of the assessee in the books of First Tek Pvt. Ltd. There was no incriminating material made available in this case in respect of the addition of Rs.1,72,05,000/-. On identical facts, in the earlier paragraphs of this order in the assessee's case we have deleted the addition following the Tribunal order in the case of P. Rama Raju in ITA Nos.424, 425 & 426/Vizag/2013 dated 31.7.2017. The relevant extract of the order is extracted in appeal cited above in ITA No.261/Vizag/2017.

15. Respectfully following the order, we allow the appeal of the assessee in ITA No.262/Vizag/2017 and dismiss the appeal of the revenue in ITA No.354/Vizag/2017.

ITA 263/Vizag/2017 (A.Y. 2008-09):

16. All the grounds of appeal are related to the addition of Rs.10,72,500/- representing interest derived on the money advanced by the assessee. During the assessment proceedings, the A.O. found that the assessee has admitted the additional income of Rs.54.00 lacs relating to the promissory notes which were found and seized during the course of search. However, it is observed that the assessee has not admitted the income relating to the interest earned on the advances

given by him. As per the promissory notes, the assessee was receiving the interest @ 24% p.a. and 2.5% p.m. on the amounts advanced as per the details given hereunder:

Date of pro note	Name of lender	Amount	Rate of Int.	Interest
06/08/2007	B. Kasi Vishwanadham	3,00,000	-	-
17/11/2007	B. Kasi Vishwanadham	1,00,000	2.5% p.m.	12,500
28/06/2007	B. Kasi Vishwanadham	10,00,000	24% p.a.	2,00,000
28/06/2007	B. Lakshmi Bhavani	10,00,000	24% p.a.	2,00,000
06/04/2007	B. Kasi Vishwanadham	10,00,000	24% p.a.	2,40,000
07/04/2007	B. Lakshmi Bhavani	10,00,000	24% p.a.	2,40,000
16/07/2007	B. Anjaneyulu	10,00,000	24% p.a.	1,80,000
Total		54,00,000		10,72,500

Since the assessee has not admitted the interest income, the A.O. computed interest of Rs.10,72,500/- and brought to tax

17. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) confirmed the addition made by the A.O.

18. Aggrieved by the order of the CIT(A), the assessee is in appeal before us. During the appeal hearing, the Ld. A.R. did not press the appeal. Therefore, the appeal is dismissed as withdrawn.

19. The appeal filed by the assessee in ITA No.263/Vizag/2017 is dismissed.

20. In the result, the appeal of the assessee in ITA No.261, 262 are allowed and in ITA No.263 is dismissed. The revenue appeal in ITA No.349 and 354 are dismissed.

The above order was pronounced in the open court on 19th Jan'18.

Sd/-	Sd/-
(डि.एस. सुन्दर सिंह)	**(वी. दुर्गाराव)**
(D.S. SUNDER SINGH)	**(V. DURGA RAO)**
लेखा सदस्य/ACCOUNTANT MEMBER	**न्यायिक सदस्य/JUDICIAL MEMBER**

विशाखापटणम /Visakhapatnam:
दिनांक /Dated : 19.01.2018
VG/SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – Sri Bhavanasi Anjaneyulu, S/o Satyanarayana, C/o Sri Balaji Chemical Industries, 19-1084, Guntur Road, Piduguralla, Guntur District 522 413.
2. प्रत्यार्थी / The Respondent – The ACIT, Central Circle, Vijayawada
3. प्रत्यार्थी / The Respondent – The DCIT, Central Circle, Vijayawada
4. आयकर आयुक्त / The Principal CIT(Central), Visakhapatnam
5. आयकर आयुक्त (अपील) / The CIT (A)-3, Visakhapatnam
6. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
7. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM